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MUHAMMAD SAIFUL AZHAR MOHD NASIR v. PP

HIGH COURT MALAYA, MELAKA
ANSELM CHARLES FERNANDIS J
[CRIMINAL APPEAL NO: MA-41S-7-06-2023]
12 AUGUST 2025

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Abstract – *When stills from a video recording of a vehicle's dashcam clearly shows the traffic light facing the direction from where the motorcyclist is coming from is red, and a road accident occurs, the motorcyclist ought to be found guilty of an offence under r. 17 of the LN 167/59 for not obeying the traffic light signal. In this case, with no evidence of the video recording being tampered with, supported by various witnesses' accounts of the incident, the conviction of the motorcyclist is safe and a fine of RM1,000 imposed is, in the circumstances, reasonable.*

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ROAD TRAFFIC: *Accident – Collision between two vehicles – Failure to obey traffic light signal – Evidence from dashcam and memory card of motorcar – Authenticity of video – Whether tampered with – Whether admissible – Whether verified – Whether stills at time of collision showed traffic light facing direction from where motorcyclist was from showed red light – Whether conviction of motorcyclist safe – Whether fine imposed appropriate and reasonable*

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The appellant was charged for an offence under r. 17 of the LN 167/59 for not obeying the traffic light signal, which was punishable under s. 119(2) of the Road Transport Act 1987 ('RTA'). The prosecution's narrative was that on 14 January 2021 at about 6.15am, SP2 was driving a car marked 'military police' ('car') with three other army personnel. As SP2 was driving, he passed through a traffic light which he claimed showed green at that time. As he was turning to the right, a motorcycle ridden by the appellant suddenly collided into the car from the right. SP2 stated that the collision happened very fast and he did not see the motorcycle coming out of the junction. It was in evidence that the car came complete with a dashcam. During cross-examination, it was put to SP2 that he was the one who went against the traffic light when it was red, to which he denied. After his re-examination, SP2 was recalled for the purpose of identifying a CD ('P4') and a memory card ('P3'). P4 contained the video of the collision which was captured by P3 in the dashcam. SP2 confirmed the contents of P4 was obtained from P3 that he had handed over to the police. At the end of the prosecution's case, the Magistrate found the prosecution had proved a *prima facie* case against the appellant in accordance with s. 173(h) of the Criminal Procedure Code ('CPC'). At this stage, there was the direct evidence of SP2 who said the traffic light was green, supported by SP3 in stating that the collision occurred in the area of the yellow box and that the appellant was riding at a high speed. As corroboration, there was also the evidence from

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the dashcam which showed the traffic light facing the direction of travel of the appellant was red at the time of the collision. SP2 had lodged the police report in less than an hour after the incident, the contents of which supported his testimony in court. The appellant, in his defence, stated that the video from P4 had been tampered with. He also denied that he had gone through the red light when the collision occurred and said that the traffic light at that time was green. He claimed that the car driven by SP2 came out in a reckless manner from the left junction. SD2, a colleague of the appellant, claimed that he was riding his motorcycle about 30 metres behind the appellant and said that when the appellant was going through the traffic light, it was green. He lodged a police report six days after the incident to 'back up' the appellant's version. After a full trial, the Magistrate, in holding that the prosecution had proved its case beyond reasonable doubt, found the appellant guilty. The appellant was fined RM1,000 in default four months imprisonment. Dissatisfied, the appellant appealed against the conviction and sentence imposed by the Magistrates' court.

Held (dismissing appeal):

(1) The Magistrate found from the evidence of SP2 that the traffic light on his side was green when he crossed it before the collision took place. SP2's evidence did not require any corroboration in law as long as the trial Magistrate found it to be credible, in which, she found it to be so in this case. The Magistrate was also correct in accepting the evidence in P4 which was the video from the dashcam. There was no tampering of P4. Both SP2 and SP4 had identified the contents of P4 when it was played in court. (paras 61 & 62)

(2) Apart from the admission of the video in P4 under s. 6 of the Evidence Act 1950, *ie*, '*res gestae*', the video in P4 was admissible because SP2 was in fact the maker of the video. SP2 was in control of the vehicle in which the dashcam was placed. The car's journey was being recorded to wherever SP2 was driving the car. It would start when SP2 began driving and ceased recording when SP2 stopped driving. It was being recorded automatically wherever the car was being driven to by SP2. The recording was therefore produced by the dashcam in the course of its ordinary use. As SP2 was the maker of the video, therefore, there was no requirement for a s. 90A of the Evidence Act 1950 certificate to be made. The fact that SP2 and SP4 had verified the contents of P4 when it was played in court lent weight to the authenticity of the video. (paras 67-70)

(3) The appellant, by merely stating that the video was tampered with without putting to the prosecution witnesses which part of the video had been tampered with and the part in the video which was at variance with the defence version, was purely conjecture and without basis. Stills from the video recording in P4 had been taken and incorporated into the

judgment of the Magistrate. It showed the situation at the time of the collision and shortly thereafter. The stills at the time of the collision clearly showed the traffic light facing the direction from where the appellant was coming from was red. (paras 76 & 81)

(4) After considering all the evidence, the Magistrate rejected the defence contention that the traffic light along the appellant's path was green. She also rejected the contention that P3 and the contents of P4 had been tampered with. Both SP2 and SP4 confirmed that the video showed how the accident occurred as well as it was originally from the memory card given by SP2 to SP4. (para 82)

(5) The defence of the appellant had also been considered, in particular that of SD2 who was a colleague of the appellant and travelling at the same time as the appellant. He made a police report six days after the incident although he claimed to have witnessed the incident. There was no cogent reason as to why he took six days to make the report. This was despite the fact that he was not working during the day and he did not sustain any injuries. This was in contrast with the report lodged by SP2 which he lodged only a few minutes after the incident. SD2 disagreed with the prosecution that in the video, the traffic light showed red at the time of the collision. He said it was green at the time he arrived. However, this did not coincide with the sequence in the video and stills referred to where it was red when the collision took place and then green afterwards. (paras 83-85)

(6) The conviction of the appellant was safe. The fine of RM1,000 imposed on the appellant was reasonable in the circumstances of the case. (para 88)

Case(s) referred to:
Ahmad Najib Aris v. PP [2009] 2 CLJ 800 FC ***(refd)***
Benjamin William Hawkes v. PP [2020] 8 CLJ 267 FC ***(refd)***
Director Of Public Prosecutions v. Feehan [2022] IECA 82 ***(refd)***
Lim Guan Eng v. PP [2000] 2 CLJ 541 FC ***(refd)***
Mohd Johi Said & Anor v. PP [2005] 1 CLJ 389 CA ***(refd)***
Mohd Khayry Ismail v. PP [2014] CLJU 412; [2014] 1 LNS 412 CA ***(refd)***
PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***
PP v. Paneerselvan Krishnan & Ors [1990] 2 CLJ 833; [1990] 2 CLJ (Rep) 804 HC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 51A, 173(h)
Evidence Act 1950, ss. 3, 6, 90A, 157

For the appellant - K Kulasekar; M/s K Kulasekar & Assocs
For the respondent - Mohd Nabilalif Mohd Rosli; DPP

Reported by Suhainah Wahiduddin

JUDGMENT

Anselm Charles Fernandis J:

Introduction

[1] On 3 April 2024, this court had dismissed the appellant's appeal against conviction and sentence imposed by the Magistrates' Court. Dissatisfied with this court's decision, the appellant appealed to the Court of Appeal.

Brief Facts

[2] The appellant was charged as follows:

Pertuduhan

> Bahawa kamu pada 14/01/2021 jam lebih kurang 06:15 pagi di F Jalan Umbai-Sungai Udang, Melaka Tengah, Melaka sebagai penunggang kenderaan bermotor Motosikai QAA4470B telah menunggang kenderaan tersebut dan tidak mengikut peraturan isyarat (papan tanda) yang sah iaitu tidak memberhentikan kenderaan tersebut di isyarat lampu merah, yang bertentangan dengan Kaedah 17 LN 166/59 dan oleh yang demikian itu, kamu telah melakukan satu kesalahan dan boleh dihukum dibawah Seksyen 119(2) Akta Pengangkutan Jalan 1987 (Akta 333/87) dan dibaca bersama Seksyen 128(1) Akta yang sama.

[3] At the Magistrates' Court, the appellant was found guilty after full trial for an offence under r. 17 of the LN 166/59 that is for not obeying the traffic light signal. He was fined RM1,000 in default four months imprisonment. The appellant paid the fine.

[4] The parties will be known as they were in the lower court.

[5] The prosecution had called a total of four witnesses to prove the charge. The defence had called three witnesses including the appellant.

Prosecution's Case

[6] The prosecution's narrative was that on 14 January 2021 at about 6.15am, SP2 was driving a car registration number ZD 7024 ("the car"). The car was marked "military police". He left the army camp at about 6.10am. There were three other army personnel in the car. They were on patrol duty. He was travelling from the direction of Terendak Camp. He stated that he was from the "laluan bas" or direction of the bus as shown in photograph H of P1 Jilid 3 Rekod Rayuan (RR).

[7] As SP2 was driving, he passed through a traffic light which he said showed green at that time. See pp. 9 and 23 NOP Jilid 2 RR.

[8] At that time, there was another car in front of his car. As he was turning to the right a motorcycle registration number QAA 4470B ridden by the appellant suddenly collided into the car from the right. He states that the

collision happened very fast and he did not see the motorcycle coming out of the junction. The damage was to the driver's side right door. The damage to the car can be seen at photographs A, C and D of P1 Jilid 3 RR.

[9] He marked "X" where the collision took place as can be seen on the "tiang". SP2 explained the "X" was in the yellow box. See p. 12 NOP. The "X" can be seen on the "tiang" photograph "H" of P1 Jilid 3 RR.

[10] SP1 lodged a police report on the same day at 7.02am. It was marked as P2 at Jilid 3 RR.

[11] It was in evidence that the car was maintained by "SPANCO". The car came complete with a dashcam when it was acquired.

[12] During cross-examination, it was put to SP2 that he was the one who went against the traffic light when it was red. He denied this accusation. See pp. 21 and 22 NOP.

[13] After his re-examination, SP2 was recalled for the purpose of identifying a CD and a memory card taken from the dashcam in the car driven by SP2. SP2 said that the CD contained the video of the collision which was captured in the memory card in the dashcam. See pp. 36 and 37 NOP.

[14] The CD was marked P4 and the memory card as P3. The CD was played in court. SP2 confirmed the contents of the CD was obtained from the memory card he handed over to the police. He confirmed the video which was produced and played in court and marked P4 was from the dashcam in the car. He pointed out that the dashcam inside the car at the rear can be seen at P1 photograph D Jilid 3 RR.

[15] Counsel for the appellant had objected to the production of P4 at the recalling of SP2. His objection was the sudden production of the CD had prejudiced the defence.

[16] I am, however, of the view that there was no prejudice to the appellant as to the production of the CD, *ie*, P4 during the course of the trial. This was because counsel for the appellant had ample opportunity to examine the contents of P4.

[17] The learned Magistrate had addressed this issue in detail in her judgment. Needless to say, I agree with her conclusion in respect of the production of P4:

> Pihak pendakwaan telah mengemukakan salinan rakaman dashcam selepas SP3 selesai memberi keterangan. Pihak pembelaan membantah pengemukaan salinan rakaman ini atas alasan ini merupakan percubaan pendakwaan untuk mengemukakan suatu keterangan baru, Mahkamah telah memutuskan bahawa OKS tidak diprejudiskan dengan pengemukaan P4 iaitu rakaman dashcam dalam format CD tersebut. Pihak

pendakwaan telah menyerahkan P4 kepada peguambela OKS pada hari SP2 pertama kali memberi keterangan, iaitu pada 14.6.2022. Pihak pendakwaan tidak pernah sama sekali menyoal SP2 dan SP3 berkenaan P4 tersebut bagi memberi peluang kepada peguambela OKS meneliti rakaman dashcam tersebut. **Pembelaan tidak diprejudiskan dan mempunyai masa yang mencukupi untuk meneliti P4** tersebut memandangkan SP2 hanya dipanggil semula untuk memberi keterangan berkenaan P4 pada 5.9.2022. (emphasis added)

[18] Ideally, the CD should be given to the defence before the commencement of the trial under s. 51A of the Criminal Procedure Code (CPC). However, it is not a mandatory requirement as s. 51A allows documents to be adduced even after the trial had commenced. The relevant parts read:

(1) The prosecution shall before the commencement of the trial deliver to the Appellant the following documents:

(a) ...

(b) ...

(c) ...

(2) ...

(3) A document shall not be inadmissible in evidence merely because of non-compliance with subsection (1).

(4) The Court may exclude any document delivered after the commencement of the trial if it is shown that such delivery was so done deliberately and in bad faith.

(5) Where a document is delivered to the Appellant after the commencement of the trial, the Court shall allow the Appellant –

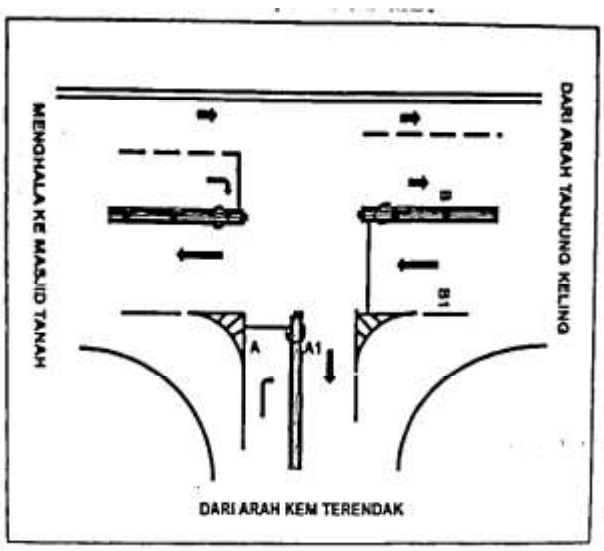
(a) a reasonable time to examine the document; and

(b) to recall or re-summon and examine any witness in relation to the document.

[19] In *Benjamin William Hawkes v. PP* [2020] 8 CLJ 267, the Federal Court held that non-compliance to s. 51A of the CPC would not prevent the prosecution from tendering the documents which were not delivered to the appellant person before trial as evidence in the course of trial. The section was only procedural and not evidential.

[20] I find that the appellant had more than reasonable time to examine P4. There was therefore no prejudice on adducing P4 after the trial had commenced. Neither was the appellant able to prove bad faith on the part of the prosecution in the delayed production of P4.

[21] The learned Magistrate had also correctly interpreted the sketch plan P5 which was consistent with the evidence of SP2 and SP3. The sketch plan is reproduced below:



[22] This is what she stated:

Kenderaan-kenderaan terlibat:

Motorkar peronda ZD 7024 dan motorsikal OKS.

Arah perjalanan

Motorkar: di laluan A-A1 dari bawah ke atas hendak belok ke kanan, iaitu Lorong B

Motorsikal: di laluan B-B1.

Jika berdasarkan gambar H, SP2 dari laluan bas, manakala OKS dari bawah ke atas.

Versi pendakwaan

Jika berpandukan rajah kasar, SP2 telah melepasi lampu isyarat di A1 dan belok ke kanan. Tiba-tiba motorsikal OKS datang melanggar motorkar yang dipandu SP2.

Versi pembelaan

Lampu isyarat di laluan sah OKS berwarna hijau ketika perlanggaran dengan motorkar yang dipandu SP2 berlaku.

P4 dirujuk. la merupakan rakaman daripada kamera di bahagian belakang motorkar peronda. Rakaman ini menunjukkan motorsikal OKS yang terpelanting selepas melanggar motorkar peronda dan lampu isyarat ketika itu masih berwarna merah. Selepas perlanggaran tersebut berlaku, barulah lampu isyarat bertukar ke warna hijau.

[23] The learned Magistrate had also reproduced the stills from the video from CD, *ie*, P4 showing the colour of the traffic lights at the time and after the collision. The stills are produced here:

[24] This was what she said in respect of the first still pictured above:

> P4 dirujuk. la merupakan rakaman daripada kamera di bahagian belakang motorcar peronda. Rakaman ini menunjukkan motorsikal OKS yang terpelanting selepas melanggar motorkar peronda dan lampu isyarat ketika itu masih berwarna merah.

[25] This is what the Magistrate said of the second still pictured above:

> Selepas perlanggaran tersebut berlaku, barulah lampu isyarat bertukar ke warna hijau.

[26] SP2 denied that the dashcam or memory card had been tampered with. This was because the "SD", *ie*, the memory card was in the dashcam all the while. See p. 42 NOP.

[27] SP2 also said that at the time the CD was being made he was there. At p. 43 NOP he states:

A Kamu tahu siapa yang hasilkan CD ni?

Pihak polis lah.

Tapi kamu tidak nampak kan?

Waktu dia bagi saya adalah dia buat, saya tengoklah.

B **[28]** SP2 further explained that he himself had taken the dashcam and memory card and handed it over to the police on the day of the incident. This is what SP2 said in evidence at p. 37 NOP:

Kamu tahu kenapa kamu dipanggil semula?
Sebab dashcam.

C

Bagaimana kamu dapat?
Dashcam ini saya dapat daripada kereta peronda sendiri.

Apa nombor kereta peronda tu?
ZD 7024.

D Bagaimana recording ini boleh dikemukakan kepada polis?
Memory card itu ada dalam dashcam, saya beri pada polis trafik.

Bila kamu beri kepada trafik?
Petang, pada hari kejadian.

E Dengan izin. Saya mohon video recording itu dipasangkan untuk pengecaman oleh 8 saksi.
Tengok video ini dan camkan jika ini dashcam yang kamu hantar kepada polis atau tidak?
Ya, benar.

Adakah dashcam ini yang diberikan kepada polis?
F Ya.

Kamu beri salinan itu melalui memory card?
Ya.

Ada bawa memory card itu?
Ada.

G

Boleh kemukakan?
Ya.

P3 – memory card
P4 – Salinan CD

H **[29]** SP3 was also in the car at the time of the collision. He said SP2 switched on the blue light (*ie*, flashing blue light) as they were entering the patrol area. See p. 25 NOP. He said he saw the motorcycle of the appellant coming very fast ("sepantas kilat").

[30] He asserted that the motorcycle ridden by the appellant suddenly I collided into the car driven by SP2. He marked Y at the place of the collision. See p. 26 NOP Jilid 2 RR. See also encl. 20 PDF 9 where the letter "Y" can be seen on photograph "H".

[31] He also stated that the area marked "X" by SP2 was where the car braked. See p. 33 NOP.

[32] SP4, the investigating officer stated that she received the report lodged by SP2 on 14 January 2021. She went to the scene with the photographer SP1 on the same day at about 5pm. On the same day, she made the sketch plan (P5). She admitted that she had mistakenly failed to put the traffic lights in her sketch plan. SP4, however, stated in evidence that the traffic light concerned was the one at A to A1 on P5. See p. 49 NOP Jilid 2.

[33] She said she received the video recording from the person in the car number ZD 7024 which showed the appellant going against the traffic light. See p. 48 NOP.

[34] The video recording was played in court and SP4 identified the recording in P4 as the same she had received from SP2. See p. 50 NOP. This is what she evinced:

> Laporan polis Syafiq (SD2) ni bertentangan dengan siasatan kamu. Tolong jelaskan. Melalui rakaman video yang saya terima daripada peronda, jelas nampak bahawa iampu isyarat merah dari arah mereka.
>
> Sila lihat rakaman video, adakah ini rakaman yang kamu maksudkan?
>
> Ya.

[35] SP4 said that she had received the memory card on the same day of the incident, *ie*, 14 January 2021. She then copied the contents of the memory card to her personal computer. This is what she said at p. 58 NOP:

> Pada hari yang sama hari kejadian 14.01.21, saya telah salin video itu daripada memory card ke dalam PC saya.

[36] The video was converted into the CD (P4) by the photographer. See p. 57 NOP. She handed over the CD to the DPP on 19 May 2022.

[37] SP4 did not agree with the suggestion by counsel that the video had been tampered. SP5 explained in the following manner:

> Peguam tanya beberapa soalan mengenai SD card tersebut telah diusik kerana kamu tidak rampas SD card tersebut. Kamu cakap tidak setuju. Boleh tolong jelaskan kenapa?
>
> Pada hari kejadian, Najimudin (SP2) ada beri saya SD memory card itu, dan saya juga telah menyalin video itu direct daripada SD itu. Apa rakaman yang saya beri kepada pendakwa adalah salinan yang betul yang saya ambil pada hari yang sama. Jadi tidak ada sebarang edit atau pun apa-apa melalui video tersebut.

[38] SP4 explained that she did not make a video of the front dashcam as it did not show how the collision occurred. See p. 64 NOP.

[39] At the end of the prosecution's case, the learned Magistrate had found that the prosecution had proven a *prima facie* case against the appellant in accordance with s. 173(h) of the CPC.

[40] At this stage there was the direct evidence of SP2 who said the traffic light was green at A to A1 on the sketch plan P5. SP3 supported the evidence of SP2 in stating that the collision occurred in the area of the yellow box and that the appellant was riding at a high speed.

[41] As corroboration there was also the evidence from the dashcam which showed the traffic light facing the direction of travel of SD1 was red at the time of the collision.

[42] SP2 had lodged the police report P2 in less than an hour after the incident, the contents of which support his testimony in court.

[43] Under s. 157 of the Evidence Act, a previous statement of a witness such as P2 can corroborate his testimony in court. See: *Lim Guan Eng v. PP* [2000] 2 CLJ 541.

[44] Further P2 was made shortly after the incident when the opportunity presented itself. In *PP v. Paneerselvan Krishnan & Ors* [1990] 2 CLJ 833; [1990] 2 CLJ (Rep) 804, Edgar Joseph Jr J (as His Lordship then was) explained that the words "at or about the time" must mean that the statement must be made at once or at least shortly after when a reasonable opportunity for making it presents itself. The object of s. 157 of the Evidence Act 1950 seems to be to admit statements made at a time when the mind of the witness is so connected with the events as to make it probable that his description of them would be accurate.

The Defence Case

[45] There were three witnesses called for the defence. They were the appellant himself SD1 and two other witnesses, *ie*, SD2 and SD3.

[46] The appellant stated that the video from the CD (P4) had been tampered with. He also denied that he had gone through the red light when the collision occurred. He said that the traffic light at that time was green. He said the car number ZD 7024 came out in a reckless manner ("melulu") from the left junction. He said he braked. See p. 80 NOP.

[47] SD1 denied that he did not brake because he was sleepy and wanted to arrive home quickly. He denied he was riding the motorcycle fast. See p. 82 NOP.

[48] When the video of the collision was played to the appellant, he agreed that the traffic light facing him showed it was red. He nevertheless disagreed with the prosecution that at the time of the accident the traffic light from where the car came from was green. See p. 85 NOP. He identified as D7 the police report dated 19 March 2021 as the one he had lodged.

[49] SD2 was a colleague of the appellant. They worked at the same place. Before the accident he was riding his motorcycle about 30 metres behind the appellant. He said that when the appellant was going through the traffic light it was green. A car came from the direction of Kem Terendak in a reckless manner ("secara melulu") and the appellant motorcycle collided into the car. See p. 89 NOP.

[50] He lodged a report six days after the incident. The report was marked D6. He said he lodged the report to "back up" the appellant's version. See p. 100 NOP.

[51] In cross-examination, he said he arrived at the scene about one or two seconds after the collision took place. He was travelling about 60km per hour. He denied he and the appellant were racing at that time. See pp. 95 and 96 NOP.

[52] SD3 was a Major at the Markas Tentera Darat Jalan Padang Tembak, Kuala Lumpur. He tendered a "Buku Rondaan" (D9), there was a row which was not filled up. There was nothing suspicious about this. He said that if an accident had occurred involving a vehicle, the report will be sent to the three division in Kem Terendak.

Findings Of The Magistrates' Court

[53] In her judgment, the learned Magistrate had gone through the prosecution's version as well as the defence's version. This can be seen at p. 3 of her judgment. The important issue was a factual one, namely what was the colour of the traffic light was when SD1 passed through it and collided into the car.

[54] At the end of the defence case and after seeing and hearing the prosecution witnesses and defence witnesses, the learned Magistrate found that the prosecution had proven its case beyond reasonable doubt. In other words, she found that the defence had failed to raise a reasonable doubt in the prosecution's case. She found that the appellant guilty and convicted and sentenced him accordingly.

The Law On Appellate Intervention

[55] The law on the appellate intervention is quite settled. An appellate court should be slow in disturbing the findings of facts arrived by the trial court who had the advantage of seeing and hearing the witnesses, unless there are substantial and compelling reasons for disagreeing with the finding.

[56] In *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457; [2005] 2 MLRA 590, the Federal Court held as follows:

> Now, it settled law that it is no part of the function of an appellate Court in a criminal case-or indeed any case-to make its own findings of fact. That is a function exclusively reserved by the law to the trial Court. **The**

reason is obvious an appellate Court is necessarily fettered because it lacks the audiovisual advantage enjoyed by the trial Court.
(emphasis added)

[57] In *Mohd Johi Said & Anor v. PP* [2005] 1 CLJ 389; [2005] 5 MLJ 409 the Court of Appeal made a distinction between civil and criminal appeals when it made the following observations:

> Unlike civil appeals, where the appellant carries the burden of showing that the judge at first instance went wrong, in a criminal case the duty of the court is to consider whether the conviction is right. **The correct approach is therefore not whether the decision is wrong but whether the conviction is safe.** See *Mohammad Hussain v. Emperor* AIR [1945] Nag 441; *Zahari bin Yeop Baai v. Public Prosecutor* [1977] CLJU 162; [1977] 1 LNS 162; [1980] 1 MLJ 160. (emphasis added)

[58] This court is guided by the principles laid down by these high authorities when considering this appeal.

Findings Of This Court

[59] From the facts presented by the prosecution, the collision occurred in the yellow box at point "Y" and stopped at point "X" at photograph H of P1.

[60] I do not think there is any material discrepancy between SP2 and SP3 as to the actual point of collision in the yellow box where SP2 said "X" was the point of collision while SP3 said it was the point the car braked. Discrepancy, if any, can be due to the lapse of time and the suddenness of the collision, the witnesses may not be able to recall with exactitude where the collision took place.

[61] The learned Magistrate found as a matter fact from the evidence of SP2 that the traffic light on his side was green when he crossed it before the collision took place. SP2's evidence did not require any corroboration in law as long as the trial Magistrate found it to be credible, in which, in this case she found it to be so.

[62] Apart from that, I also find that the learned Magistrate was right in accepting the evidence in the CD (P4) which was the video from the dashcam. At p. 5 of the judgment, the learned Magistrate found as a fact that there was no tempering of P4. I would agree with the Magistrate as to this finding as both SP2 and SP4 had identified the contents of P4 when it was played in court.

[63] There is no doubt that a dashcam is a "computer" as defined in s. 3 of the Evidence Act 1950. Evidence in the form of video recordings had been accepted in our courts previously. Such recordings have been found to be reliable as it recorded events in "real time", *ie*, the actual time during which a process or event occurred. Section 6 of the Evidence Act 1950 caters for

such evidence. SP2 and SP4 had evinced to the authenticity of P4 when they viewed its contents in court. Further, the contents were clear and viewable as this court had also viewed the contents of P4 and found it to be so.

[64] The contemporaneous nature of video recordings had been discussed in *Mohd Khayry Ismail v. PP* [2014] CLJU 412; [2014] 1 LNS 412 where the Court of Appeal ruled as admissible two CCTV footages evidence that were recorded in two different places. In this case, PW4 had made copies of the recording by downloading it to a pen drive with the aid of a CPU and later transferring it to a CD which was marked as P13. It was contended by the defence that no s. 90A of the Evidence Act 1950 certificate was tendered. Further, it was contended by the defence that there was no oral evidence by PW24 and P13 that the video from the CCTV had been produced in accordance with s. 90A. The Court of Appeal admitted the evidence under s. 6 of the Evidence Act 1950 as *res gestae*. The Court of Appeal made the following pertinent observations:

> We do not find merit in the technical arguments placed by the learned counsel. Our reasons *inter alia* are as follows:
>
> > Tape recording evidence or CCTV recording, *etc*. at common law will be admissible based on '*res gestae*' principles as truth of its contents although they may be hearsay or even self-serving statement. Section 6 of EA 1950 and also other sections give statutory recognition to 'res gestae' principle in the widest form and is not restricted to the common law parameters. The test for relevancy is set out in the section itself in no uncompromising terms. There appears to be no comprehensive formula for its admissibility save as to guidelines suggested and/or imposed by courts all for good reasons. (See *Amrrita Lai Hazra v. Emperor* 42 Cal 957; *Bandahala bin Undik v. Public Prosecutor* [2014] 1 CLJ 708). The said section 6 of EA 1950 reads as follows:
> >
> > > Fact which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places.

[65] Reference was also made by the prosecution to the Irish Court of Appeal case of *Director Of Public Prosecutions v. Feehan* [2022] IECA 82 which states as follow:

> 30. Any footage which might have been recoverable from the dashcam was *prima facie* relevant and hence admissible. We know that it was relevant evidence not only because Mr O'Toole gave evidence of its contents having viewed it on his dashcam but also by its nature. Further, it was objective evidence not dependant on the recollection of a party if available.

[66] It is also trite that it is not in every case that a s. 90A certificate need to be adduced. The Federal Court in *Ahmad Najib Aris v. PP* [2009] 2 CLJ 800; [2007] 2 MLJ 505, explained this issue in the following manner:

> [31] I am of the view that a certificate under s. 90A (2) of the Act is not the only method to prove that a document was produced by a computer "in the course of its ordinary use". On this point I would first like to cite the case of *Gnanasegaran Pararajasingam v. PP* [1997] 4 CLJ 6 where Shaik Daud, JCA said at pp. 17-18:
>
> > On reading through section 90A of the Act, we are unable to agree with the construction placed by learned counsel. First and foremost, section 90A which had seven subsections should not be read disjointedly. They should be read together as they form one whole provision for the admissibility of documents produced by computers. As stated earlier, section 90A was added to the Act in 1993 in order to provide for the admission of computer-produced documents and statements as in this case. On our reading of this section, we find that under subsection (1), the law allows the production of such computer-generated documents or statements if there is evidence, firstly, that they were produced by a computer. Secondly, it is necessary also to prove that the computer is in the course of its ordinary use. In our view, there are two ways of proving this. One way is that it 'may' be proved by the production of the certificate as required by subsection (2). Thus, subsection (2) is permissive and not mandatory. This can also be seen in subsection (4) which begins with the words 'Where a certificate is given under sub-section (2).
>
> These words show that a certificate is not required to be produced in every case. It is our view that once the prosecution adduces evidence through a bank officer that the document is produced by a computer, it is not incumbent upon them to also produce a certificate under subsection (2) as subsection (6) provides that a document produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.

[67] I also find that apart from the admission of the video in P4 under s. 6 of the Evidence Act 1950, *ie*, '*res gestae*', the video in P4 was admissible because SP2 was in fact the maker of the video.

[68] Section 90A of the Evidence Act 1950 is an exception to the hearsay rule in respect of computer-generated documents where the maker was not called for some reason or other.

[69] It was never in contention that SP2 was in control of the vehicle in which the dashcam was placed. The car's journey was being recorded to wherever SP2 was driving the car. It would start when SP2 began driving and ceased recording when SP2 stopped driving. It was being recorded

automatically wherever the car was being driven to by SP2. This court takes judicial notice of these facts. The recording was therefore produced by the dashcam in the course of its ordinary use.

[70] On these set of circumstances, I find that as SP2 was the maker of the video and therefore, there was no requirement that s. 90A of the Evidence Act 1950 certificate to be made. The fact that SP2 and SP4 had verified the contents of P4 when it was played in court lends weight to the authenticity of the video.

[71] SP2 had obtained the memory card from the dashcam. He handed over the dashcam and memory card to the police. P4 was played in court where SP2 confirmed the contents of the video. See p. 37 of NOP.

[72] He also said that the memory card (P3) was always in the dashcam and was not tampered with. See p. 46 NOP.

[73] SP4 confirmed that she received the video recording from SP2. She also stated that the traffic light which showed red was at "A" and "A1" on the sketch plan (P5).

[74] SP4 stated the CD (P4) was produced by the "jurugambar", SP1. Although there was nothing said by SP1 on the P4, I am of the view that this was not material as SP2 and SP4 had identified the contents of P4 when it was played in court.

[75] I also find that there was no requirement in law that the video be sent to the "forensic expert" for analysis as there was no evidence that the video recording had been tampered with.

[76] I agree with the learned Magistrate that the appellant, by merely stating that the video was tempered with without putting to the prosecution witnesses which part of the video had been tampered and the part in the video which was at variance with the defence version was purely conjecture and without basis. Learned counsel for the appellant had put to SP2 the following:

> Sebab SD card dan dashcam tidak dirampas oleh polis semasa ZD 7024 ini dilepaskan, ada kemungkinan besar bahawa data, data tahu tidak? Data dalam SD card, ada kemungkinan besar telah diusik.
>
> Tidak.

[77] This is what the learned Magistrate said at pp. 5 and 6 of her judgment in respect of this matter:

> Selain itu, mahkamah berpendapat soalan-soalan peguambela OKS yang mengatakan rakaman video itu telah dikacau ganggu adalah bersifat spekulasi kosong dan tanggapan tidak berasas kerana tidak ada sebarang keterangan di mahkamah atau soalan yang diajukan di mahkamah yang

A highlight bahagian mana di dalam rakaman tersebut yang berbeza dengan versi OKS atau bahagian mana di dalam rakaman tersebut yang telah diusik.

Oleh itu, mahkamah memutuskan P4 sebagai suatu keterangan yang boleh diterima.

B **[78]** In fact, defence counsel for the appellant had tendered his copy of the CD and contents as D8 as an exhibit. D8 is a copy of P4. D8 was played in court. Apart from stating that SD2 was at the scene after the collision, nothing else was asked by counsel as to the colour of the traffic light in the video at the time of collision which showed red.

C **[79]** SP4 was steadfast in her evidence that there was no tampering in the video of the collision. This is what she said at p. 65 NOP where SP4 stated:

Peguam cakap jika saya ada hantar rakaman ke forensic, ya betul saya tidak ada hantar. Itu menjelaskan bahawasanya tiada pakar yang dapat menentukan kesahihan video tersebut. Tetapi berdasarkan apa saya lihat, D saya percaya video yang saya lihat ialah rakaman tulen daripada video dashcam kereta peronda tersebut.

[80] She further said that the car had dashcams at the back and front. The video from the front dashcam was not included because it did not show how the accident happened.

E **[81]** Stills from the video recording in P4 had been taken and incorporated into the judgment of the learned Magistrate. It shows the situation at the time of the collision and shortly thereafter. The stills at the time of the collision clearly shows the traffic light facing the direction from where the appellant F was coming from showed it was red. Thereafter, the same traffic light turned green.

[82] The learned Magistrate at p. 8 of her judgment had considered the defence case. After considering all the evidence, she rejected the defence's contention that the traffic light along the appellant path was green. She also G rejected the contention that the memory card (P3) and the contents of the CD (P4) had been tampered with. I affirm her findings of fact that both SP2 and SP4 confirmed that the video showed how the accident occurred as well as it was originally from the memory card given by SP2 to SP4. This is what she said in respect of the video at p. 9 of her judgment:

H c) Ketiadaan sijil perakuan di bawah Seksyen 90A Akta Keterangan 1950 tidak menjejaskan nilai atau keberatan P4 tersebut. Ini kerana SP2 telah mengesahkan bahawa beliau telah memuatnaik rakaman video itu ke dalam kad memory lalu menyerahkan kepada SP4 pada hari yang sama. SP4 pula menyalinkan rakaman itu ke dalam CD. Rakaman video itu dimainkan semula di mahkamah. SP2 dan SP4 mengesahkan ia I merupakan rakaman video yang dimaksudkan.

[83] This court had also considered the defence of the appellant in particular that of the SD2 who was a colleague of the appellant and travelling at the same time as the appellant. He made a police report six days after the incident although he claims to have witnessed the incident. There was no cogent reason why he took six days to make the report. This was despite the fact that he was not working during the day and he did not sustain any injuries. This is in contrast with the report lodged by SP2 which he lodged only a few minutes after the incident.

[84] SD2's evinced that he arrived at the place only one or two seconds after the collision. He was going about 60km/h. See p. 95 NOP. He denied racing with the appellant, I find that at that speed and the very close timeframe, *ie*, only one or two seconds, he too would have collided into the car. I also note that there was no brake marks found at the scene.

[85] SD2 disagreed with the prosecution that in the video the traffic light showed red at the time of the collision. He said it was green at the time he arrived. However, this does not coincide with the sequence in the video and stills referred to in the judgment where it was red when the collision took place and then green afterwards.

[86] I also considered the evidence of SD3. I find that his evidence was only relevant to the fact that it was stated in the "buku rondaan" showed that the car ZD7024 had met with an accident or "berlaku kemalangan". I find SD3's evidence does not aid the defence at all.

[87] As for the fine of RM1,000 imposed, I consider accused that it was reasonable in the circumstances of this case.

Conclusion

[88] For the reasons stated, I find the conviction of the appellant safe. See *Mohd Johi Said* (*supra*). I therefore dismiss his appeal. I affirm the conviction and fine imposed by the learned Magistrate.